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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,580	01/24/2005	Luc De Vuyst	DECL69.003APC	9933

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EXAMINER

FERNANDEZ, SUSAN EMILY

ART UNIT	PAPER NUMBER
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1651

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
31 DAYS	04/13/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 31 DAYS from 04/13/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
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Office Action Summary

Application No.

10/516,580

Applicant(s)

DE VUYST ET AL.

Examiner

Susan E. Fernandez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-37 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

The preliminary amendment filed December 12, 2004, has been received and entered.

Claims 1-37 are pending.

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-5, 19-21, and 32-35, drawn to *Streptococcus thermophilus* ST 111 strain and method of using a culture of the strain for fermentation.

Group II, claim(s) 6-12, drawn to a method for preparing an exopolysaccharide comprising culturing a lactic acid bacterial strain in a medium comprising milk and lactalbumin hydrolysate.

Group III, claim(s) 13, drawn to a high-molecular-mass polysaccharide.

Group IV, claim(s) 14, 22, and 23, drawn to a method for improving the texture of a fermented product, and a dairy product obtainable by said method.

Group V, claim(s) 15 and 17, drawn to a method for improvement of water retention in a fermented product/during a fermentation process.

Group VI, claim(s) 16, drawn to a method for decreasing syneresis of a fermented product.

Group VII, claim(s) 18, 36, and 37, drawn to a method for producing a dairy product, and a dairy product obtainable by said method.

Group VIII, claim(s) 24, drawn to a functional starter culture comprising a culture of *Streptococcus thermophilus* ST 111 strain and a culture of *Lactobacillus delbrueckii* subsp. *bulgaricus*.

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Group IX, claim(s) 25, 26, and 29, drawn to a method of using a high-molecular-mass exopolysaccharide as an additive to a food product for improving water retention of the food product.

Group X, claim(s) 25, 27, and 29, drawn to a method of using a high-molecular-mass exopolysaccharide as an additive to a food product for decreasing syneresis.

Group XI, claim(s) 25, 28, and 29, drawn to a method of using a high-molecular-mass exopolysaccharide as an additive to a food product for improving the texture of said food product.

Group XII, claim(s) 30 and 31, drawn to a culture comprising an exopolysaccharide-producing lactic acid bacterial strain for the production of high-molecular-mass heteropolysaccharides.

The inventions listed as Groups I-XII do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

A “special technical feature” is defined by PCT Rule 13.2 as “those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.” In the instant case, as discussed below, certain embodiments of claimed inventions fail to make any contribution over the prior art. Because certain embodiments of the claimed inventions fail to make any contribution over the prior art, the claims as filed fail to contain a single common special technical feature supporting a showing unity of invention.

Specifically, as evidenced by the International Search Report, which is part of the record in this application, it is clear that at least six publications, Faber et al. (Carbohydrate Research. 1998. 310(4): 269-276), Ariga et al. (Journal of Food Science. 1992. 57(3): 625-628), Lemoine et al. (EP 889135), Lemoine et al. (EP 889136), Briczinski et al. (J. Dairy Sci. 2002. 85(12): 3189-3197), and Degeest et al. (Applied and Environmental Microbiology. 1999. 65(7): 2863-2870), demonstrate that the claims presented for examination at the very least lack an inventive step.

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Because the claims as filed lack a common special technical feature which defines them over the prior art, the claims lack unity.

Lack of a common special technical feature, and therefore lack of unity, is further demonstrated by the fact that the methods of Groups II, IV-VII, and IX-XI result in different effects (preparation of an exopolysaccharide, texture improvement, water retention improvement, syneresis decrease, production of a dairy product). Further still, though Groups IV-VI have the same effects as Groups XI, IX, and X, respectively, Groups IV-VI require a culture of *Streptococcus thermophilus* ST 111 strain, whereas Groups IX-XI require a high-molecular-mass exopolysaccharide. Thus, Groups IV-VI and Groups IX-XI lack a common special technical feature as they use different products. With respect to the products of Groups I, III, VIII, and XII, the claimed products do not share a common technical feature since entirely different ingredients are recited. For instance, Group I requires only *S. thermophilus* ST 111 strain, while Group III recites a high-molecular-mass polysaccharide, Group VIII recites the ST 111 strain plus a culture of *Lactobacillus delbrueckii* subsp. *bulgaricus*, and Group XII recites a culture of an exopolysaccharide-producing lactic acid bacterial strain.

In sum, in view of the demonstration by the International Search Report that there is no single common feature present in the claims which defines them over the prior art, combined with the presented claims' recitation of a series of different methods and different products having different compositions, it is clear that a holding of lack of unity is required.

Though there is no burden requirement for lack of unity, it should be noted that because these inventions are independent or distinct for the reasons given above and there would be a

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serious burden on the examiner if restriction is not required because the inventions require a different field of search, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

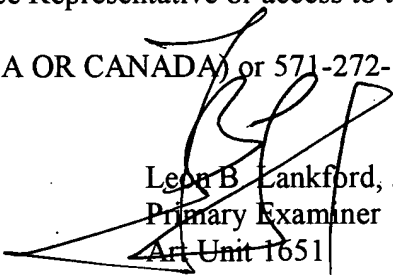
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan E. Fernandez whose telephone number is (571) 272-3444. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on (571) 272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Susan E. Fernandez
Assistant Examiner
Art Unit 1651



Leon B. Lankford, Jr.
Primary Examiner
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sef